

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
AMERICAN ELECTRIC POWER)	File No. 0002407970
SERVICE CORPORATION)	
)	
To Modify Private Land Mobile Radio)	
Station WQBN218 in Blevins, Arkansas and)	
Request for Waiver of Intercategory Sharing)	
Freeze and Request for Waiver of the 800 MHz)	
Band Wave 2 Freeze)	

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 2007

Released: March 1, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address the above-captioned modification application and request for waiver¹ of the intercategory sharing freeze² filed by American Electric Power Service Corporation (American Electric) to use certain pre-rebanding Public Safety Category channels in the Blevins, Arkansas area. For the reasons set forth herein, we grant the request in part and deny it in part. Specifically, we grant American Electric's request for waiver of the intercategory sharing freeze with respect to frequencies 858.2625 MHz, 858.7375 MHz, and 859.7375 MHz, and deny it with respect to frequency 860.7375 MHz. Accordingly, we shall process American Electric's modification application in accordance with this *Memorandum Opinion and Order*.

II. BACKGROUND

2. Generally, the Commission licenses Private Land Mobile Radio (PLMR) applicants on frequencies in the category or categories for which they satisfy the eligibility criteria. Section 90.621(e) of the Commission's Rules, however, permits "intercategory sharing" whereby applicants that are eligible for licensing in the 800 MHz Public Safety or Business/Industrial/Land Transportation (B/ILT) Categories can

¹ FCC File No. 0002407970 (filed Dec. 14, 2005), Waiver Attachment (Waiver Request).

² See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7,350 (*Intercategory Sharing Freeze Order*), *aff'd on recon.*, 11 FCC Rcd 1,452 (WTB 1995). Initially, American Electric also sought a waiver of the freeze on the filing of 800 MHz Band Reconfiguration Wave 2 applications. See Wireless Telecommunications Bureau Announces that 800 MHz Band Reconfiguration will Commence October 3, 2005, in the NPSPAC Regions Assigned to Wave 2, *Public Notice*, WT Docket No. 02-55, 20 FCC Rcd 14,455 (WTB 2005) (*Wave 2 Freeze PN*). However, American Electric no longer seeks a waiver of the Wave 2 Freeze because the freeze on non-National Public Safety Planning Advisory Committee (NPSPAC) channels ended on May 12, 2006, during our consideration of its request. See FCC File No. 0002813674 (filed Nov. 9, 2006) (American Electric request for renewal of Special Temporary Authority Call Sign WQDW594).

obtain licenses on channels outside of their respective categories if certain criteria are met, *inter alia*, no channels are available in the category for which the applicant is eligible.³ On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) placed a freeze on the filing of new applications for intercategory sharing on all PLMR frequencies in the 806-821/851-866 MHz bands.⁴ The Bureau determined that the intercategory sharing freeze was warranted to curb the increase in intercategory sharing applications for Public Safety Category channels by B/ILT licensees whose own channels were subject to increased demand from Specialized Mobile Radio (SMR) applicants.⁵

3. In July 2004, the Commission mandated the reconfiguration of the 800 MHz band to eliminate interference to public safety communications in the band.⁶ In an effort to accomplish 800 MHz band reconfiguration effectively and with limited adverse affects on licensees, the Commission determined that band reconfiguration would occur region by region.⁷ In order to maintain a stable spectral status quo during the reconfiguration of each region, the Commission concluded that an application freeze during the process would be appropriate.⁸ Moreover, the Commission reminded potentially affected parties of the availability of the Commission's waiver process and Special Temporary Authorizations (STAs) when needed in order to avoid prejudice to any applicant during the band reconfiguration process.⁹

4. On December 14, 2005, American Electric filed an application to modify its license for Station WQBN218 to authorize the use of four pre-rebanding Public Safety Category frequencies.¹⁰ Although American Electric is not a Public Safety Category eligible, it provides wireless communications in the Blevins, Arkansas area for field crews in the electricity generation and transmission operations of American

³ See 47 C.F.R. § 90.621(e)(1).

⁴ See *Intercategory Sharing Freeze Order*, 10 FCC Rcd at 7,350.

⁵ *Id.* at 7,352-53 ¶¶ 5-7.

⁶ See *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14,969 (2004) (*Band Reconfiguration R&O*); see also *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25,120 (2004) (*Band Reconfiguration Supplemental Order*). The 800 MHz band reconfiguration process consists of the issuance of a public notice thirty days before the scheduled start of reconfiguration in each NPSPAC region. See 47 C.F.R. § 90.677(b); *Band Reconfiguration R&O*, 19 FCC Rcd at 15,076 ¶ 201; see also *Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan, Public Notice*, WT Docket No. 02-55, 20 FCC Rcd 5,159 (WTB 2005).

⁷ See *Band Reconfiguration R&O*, 19 FCC Rcd at 15,078 ¶ 204.

⁸ See *Band Reconfiguration Supplemental Order*, 19 FCC Rcd at 25,158-59 ¶ 87; *Wave 2 Freeze PN*, 20 FCC Rcd 14,455. The public notice specifies a three-month voluntary negotiation period during which time identified licensees in the regions being reconfigured are encouraged to reach agreement with Nextel Communications, Inc. on the details of relocating. See 47 C.F.R. § 90.677(b). The voluntary negotiation period is followed by a three-month mandatory negotiation period, if necessary. See 47 C.F.R. § 90.677(c).

⁹ See *Band Reconfiguration R&O*, 19 FCC Rcd at 15,078 ¶ 204.

¹⁰ Previously, American Electric applied for an STA to utilize these frequencies in the Blevins area. See FCC File No. 0002369808 (filed Nov. 3, 2005). The STA subsequently was renewed, and currently is set to expire on May 14, 2007. See license for Station WQDW594.

Electric Power Company, Inc.¹¹ American Electric asserts that it discovered gaps in its coverage, which multiply as residential development in the area increases, primarily in valleys.¹²

5. In addition, American Electric asserts that there are no available B/ILT Category frequencies in the Blevins area because public safety agencies are licensed to use the bulk of B/ILT Category frequencies.¹³ Accordingly, American Electric seeks to modify its license to add four pre-rebanding Public Safety Category frequencies: 858.2625 MHz, 858.7375 MHz, 859.7375 MHz, and 860.7375 MHz.¹⁴ Finally, American Electric asserts¹⁵ that grant of its request would be consistent with a waiver granted to Central Maine Power Company in 2003.¹⁶

6. On December 20, 2006, the Public Safety and Homeland Security Bureau (PSHSB)¹⁷ provided guidance to public safety licensees seeking to apply for channels during the reconfiguration of the 800 MHz band.¹⁸ The PSHSB clarified that once the negotiation period in a region has begun, permanent licensing on the pre-rebanding frequencies should cease and subsequent licensing should be in accordance with the new, post-rebanding band plan.¹⁹ Thus, license applications are not accepted during the freeze period, and once the freeze in a region ends, new applicants (including existing licensees seeking authorizations for new facilities) will be expected to file for available frequencies based on their eligibility under the new band plan.²⁰

¹¹ See Waiver Request at 2. American Electric is a subsidiary of American Electric Power Company, Inc.

¹² *Id.* American Electric further indicates that commercial mobile radio services are not a viable option to address its coverage gaps because “[i]t is in these same areas where cellular coverage is spotty in some places and essentially non-existent in others.” *Id.*

¹³ *Id.* at 2-3. The Enterprise Wireless Association (EWA), the frequency coordinator for American Electric’s application, confirms that no B/ILT Category frequencies are available. See Letter dated Feb. 1, 2007 from Julia R. Biggs, Spectrum Manager, EWA to Ramona [M]elson.

¹⁴ See Waiver Request at 1; see also 47 C.F.R. § 90.613 (2004) (channel designation of frequencies available for assignment to eligible applicants); 47 C.F.R. § 90.617 Table 1 (2004) (channels available for eligible applicants in the Public Safety Category).

¹⁵ See Waiver Request at 4.

¹⁶ Central Maine Power Company, *Order*, 18 FCC Rcd 2,581 (WTB PSPWD 2003) (*Central Maine Power*).

¹⁷ We note that the Commission transferred authority for the 800 MHz band reconfiguration process from the Wireless Telecommunications Bureau to the Public Safety and Homeland Security Bureau on September 25, 2006. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10,867 (2006).

¹⁸ Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees with Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs for Public Safety Facilities Added during 800 MHz Band Reconfiguration, *Public Notice*, WT Docket 02-55, 21 FCC Rcd 14,658 (PSHSB 2006) (*800 MHz STA and Application Guidance PN*); see also *Band Reconfiguration Supplemental Order*, 19 FCC Rcd at 25,159-60 ¶ 89.

¹⁹ See *800 MHz STA and Application Guidance PN*, 21 FCC Rcd at 14,659 (citing *800 MHz Supplemental Order*, 19 FCC Rcd at 25159-60 n.226).

²⁰ See *id.*

III. DISCUSSION

7. As an initial matter, we note that frequency 860.7375 MHz (Channel 500), while formerly a Public Safety Category frequency, is now a SMR Category frequency.²¹ Section 90.621(e) does not authorize intercategory sharing of SMR Category frequencies such as Channel 500.²² Consequently, this channel is available only to eligibles in the SMR Category. Accordingly, we deny American Electric's waiver request with respect to this SMR Category frequency.

8. With regard to the remaining three frequencies, we may grant a waiver request where the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and where a grant of the requested waiver would be in the public interest.²³ In the alternative, we may grant a waiver where based upon unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁴

9. American Electric asserts that it satisfies both prongs of the waiver analysis because it believes that the underlying purpose of the intercategory sharing freeze would be frustrated by denying American Electric limited access to Public Safety Category frequencies when:

(a) The bulk of B/ILT frequencies assigned for use in the Blevins area is presently utilized by public safety agencies;

(b) These pre-rebanding Public Safety Category frequencies are the only frequencies available for its use;²⁵ and

(c) The Association of Public-Safety Communications Officials International, Inc. (APCO), a FCC-certified frequency coordinator for Public Safety Category frequencies, approved American Electric's request to utilize these frequencies.²⁶

Moreover, American Electric asserts that it satisfies the second prong of the rule because of the "highly" unusual number of public safety eligibles occupying a large number of non-Public Safety frequencies, coupled with the critical need to restore electrical service in times of emergency for essential police, fire, and other public safety functions.²⁷

10. Finally, we note that American Electric cites *Central Maine Power* as a similar waiver request that was granted in 2003. In *Central Maine Power*, the former Public Safety and Private Wireless

²¹ Compare 47 C.F.R. § 90.617(a) Table 1 (2004) with 47 C.F.R. § 90.617(d) Table 4B (2005).

²² See 47 C.F.R. § 90.621(e)(1).

²³ See 47 C.F.R. § 1.925(b)(3)(i).

²⁴ See 47 C.F.R. § 1.925(b)(3)(ii).

²⁵ See Waiver Request at 1.

²⁶ See Letter dated Oct. 18, 2005 from Wendy Caruthers, AFC Team Leader, APCO International, Inc. to Julia Biggs, Enterprise Wireless Alliance, attached to FCC File No. 0002369808.

²⁷ See Waiver Request at 2-3.

Division (former Division)²⁸ concluded that granting an intercategory sharing waiver for Central Maine Power to use three Public Safety Category channels at a proposed site would have no adverse impact on public safety systems and would not undermine the underlying purpose of the intercategory sharing freeze.²⁹ Central Maine Power, a major utility company, provided wholesale and retail electricity to 540,000 business and residential customers throughout the southern half of Maine and used radio communications to support the safe and efficient delivery and restoration of electrical service to the public.³⁰ Furthermore, the former Division found that grant of a waiver to Central Maine Power was consistent with precedent.³¹

11. In the instant matter, we disagree with American Electric's assertion that the underlying purpose of the intercategory sharing freeze is to allocate frequencies, in relative proportion, as between public safety and non-public safety eligibles.³² Rather, the Bureau found that B/ILT licensees were applying to utilize Public Safety Category channels in their systems through the intercategory sharing rule, so it adopted the intercategory sharing freeze in order to maintain the regulatory landscape and curtail the "dramatic increase" in B/ILT licensees filing for intercategory sharing to use Public Safety Category channels.³³

12. Nonetheless, we conclude, consistent with the former Division's decision on a similar situation in *Central Maine Power*, that the facts discussed above warrant grant of the requested relief. First, the use of these frequencies by American Electric would not adversely affect public safety operations or future public safety spectrum needs. In this connection, APCO has specifically approved the operations proposed in American Electric's application. Second, American Electric has shown that it has no reasonable alternative to the use of the three public safety frequencies because there are no available B/ILT Category channels in the Blevins, Arkansas area. Consequently, we are persuaded that American Electric requires the use of these three channels to support the safe, efficient delivery and restoration of electrical service to the public.

IV. CONCLUSION

13. The record reflects that American Electric has satisfied the waiver standard with respect to the three Public Safety Category frequencies, 858.2625 MHz, 858.7375 MHz, and 859.7375 MHz.

²⁸ The Commission reorganized the Bureau effective November 13, 2003, and the Public Safety and Critical Infrastructure Division assumed the relevant duties of the Public Safety and Private Wireless Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25,414, 25,414 ¶ 2 (2003). Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10,867 (2006).

²⁹ *Central Maine Power*, 18 FCC Rcd at 2,584 ¶ 8.

³⁰ *Id.*

³¹ *Id.* at 2,583 n.23 (citing *Fisher Ranch*, *Order*, 17 FCC Rcd 602, 603 (WTB PSPWD 2002)).

³² *See* Waiver Request at 1.

³³ *See Intercategory Sharing Freeze Order*, 10 FCC Rcd at 7352 ¶¶ 5-7; *see also* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 93-144, 12 FCC Rcd 9,972, 10,004-5 ¶ 103 (1997) ("This freeze was intended to stem the increase in intercategory applications for Public Safety channels by [I/LT and Business] license[e]s whose own channels were subject to increased demand from SMR applicants.").

Therefore, we conclude that granting the requested waiver would be in the public interest with regard to these three frequencies. However, we find that American Electric did not satisfy the waiver standard with respect to frequency 860.7375 MHz. Instead of seeking a waiver of the intercategory sharing freeze, American Electric must seek a waiver of the eligibility requirements in Section 90.617(d) of the Commission's Rules in order to operate on the SMR frequency.³⁴

V. ORDERING CLAUSES

14. For the reasons discussed herein, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, American Electric Power Service Corporation's request for waiver of the intercategory sharing freeze on December 14, 2005, IS GRANTED with respect to frequencies 858.2625 MHz, 858.7375 MHz, and 859.7375 MHz, and DENIED with respect to frequency 860.7375 MHz; and application FCC File No. 0002407970 SHALL BE PROCESSED in accordance with this *Memorandum Opinion and Order*.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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³⁴ The partial grant of the waiver request is without prejudice to American Electric's ability to seek whatever relief may be appropriate for authorized operations on the subject SMR Category frequency.